

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HEALTH**

In the Matter of the Involuntary
Discharge/Transfer of V.M., Petitioner,
by Roseville Good Samaritan Center,
Respondent

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATIONS**

The Minnesota Department of Health (the Department) initiated this contested case proceeding by issuing a Notice of and Order for Hearing on March 22, 2006. The notice scheduled a hearing in this matter on April 6, 2006 beginning at 10:00 a.m. at Roseville Good Samaritan Center, 1415 County Road B West, Roseville, Minnesota, 55113. This matter was heard by Administrative Law Judge Lucinda Jesson.

Neither party was represented by an attorney. Paula Wieczorek, Regional Ombudsman for the Office of Ombudsman for Older Minnesotans, 1240 Cedar Street, Saint Paul, Minnesota, 55155, appeared on behalf of the Petitioner, V.M., in this proceeding. Mary Simon, Social Services Director, Roseville Good Samaritan Center, 1415 County Road B West, Roseville, Minnesota, 55113, appeared on behalf of the Respondent, Roseville Good Samaritan Center (Roseville). The OAH record closed on April 6, 2006, when the hearing ended.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Health will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Finding of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this report to file exceptions and present argument to the Commissioner. Any exceptions or arguments should be submitted in writing and filed with the Minnesota Department of Health, Commissioner's Office attn: Julie Frokjer, PO Box 64970, St. Paul, MN 55164. Parties should contact Appeals Coordinator Julie Frokjer at 651.215.8753 or at the address above to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF THE ISSUES

The issue in this preceding is whether Roseville may lawfully discharge the Petitioner, V.M., for failing, after reasonable and appropriate notice, to pay for her stay at Roseville.

Based upon the record in this matter, the Administrative Law Judge makes the following:

FINDING OF FACT

1. The Petitioner is a woman whose diagnoses include Hypereosinophilic Syndrome and Decubitus Ulcers. Petitioner attended and testified at the hearing.

2. The Petitioner became a resident at Roseville on May 6, 2005. She was discharged to a hospital on June 4, 2005 and readmitted to Roseville on June 17, 2005. Petitioner was originally admitted for short term rehabilitation, but was unable to return to a less restricted setting (such as assisted living) or the community because of her ongoing medical condition.¹

3. Payment for the first sixty days of her stay at Roseville were covered by United Health Care under the Baker Hughes Incorporated Benefit Plan.² After the coverage ended, Ms. Simon completed and submitted an application for Medical Assistance on behalf of Petitioner. The application was not processed because necessary paperwork had not been submitted to support the application by either Petitioner or her representative.³ Joe Jones is Petitioner's financial representative for purposes of applying for Medical Assistance.⁴ Mr. Jones and Petitioner represented to Roseville that Mr. Jones has a Power of Attorney to operate as her financial representative for all of her financial affairs.⁵ Roseville has not seen and does not have documentation confirming this Power of Attorney.

¹ Testimony of Mary Simon, Director of Social Services.

² Testimony of Sanita Bohler, Business Office Manager; Ex. 4.

³ Testimony of Simon.

⁴ Ex. 5.

⁵ Testimony of Bohler and Petitioner, V.M.

4. After the application for Medical Assistance was denied, Petitioner was billed privately for the cost of her stay at Roseville. Billing statements were sent to Mr. Jones. Petitioner did not personally receive these monthly statements, although she did receive one statement for approximately \$27,000.00 and the latest statement for \$49,951.52.⁶

5. By letter dated November 9, 2005, Roseville notified Petitioner that the amount of \$21,126.74 was past due on her account and warned her that, if payment in full was not received, Roseville would proceed to transfer or discharge her.⁷ On November 15, 2005, Roseville sent a notice to Mr. Jones of its intent to discharge Petitioner on December 15, 2005.⁸ The notice contained information regarding the Petitioner's right to appeal, the reason for the discharge, the effective date, the contact information for the state's Ombudsman for Older Minnesotans and further stated the Petitioner would be discharged to 4705 Cedar Avenue, Minneapolis, which is the home of Mr. Jones.⁹

6. By letter dated December 14, 2005, Petitioner requested a hearing to appeal the Discharge Notice.

7. On March 6, 2006 representatives of Roseville met with Petitioner; her advocate from the Ombudsman's office, Paula Wierczorek; a representative from Adult Protection Services in Ramsey County; and Mr. Jones. During this meeting Petitioner gave Mr. Jones permission to do what was necessary in order to apply for Medical Assistance. Mr. Jones agreed to do so and also told Petitioner that she could be discharged to her house if they were unable to pay the bill.¹⁰ As of March 31, 2006, Petitioner's unpaid balance due to Roseville was \$49,951.52.¹¹

8. The only discharge planning accomplished by Roseville with regard to Petitioner is hearing Mr. Jones' assurance that "he would take care of" Petitioner. No representative from the facility has been to Mr. Jones house. No one has conducted a home visit or made any assessment of Petitioner and the home to determine what type of assistance Petitioner would need in order live in the community generally, and in Mr. Jones home in particular.¹² No plan for Petitioner's orientation to the proposed discharge placement was in place at the time of the hearing.

⁶ Testimony of Petitioner, Bohler; Ex. 2.

⁷ Ex. 6.

⁸ Ex. 1.

⁹ Ex. 1; testimony of Simon.

¹⁰ Ex. 3; testimony of Simon.

¹¹ Ex. 2.

¹² Testimony of Simon, L.

9. The Department issued the Notice of and Order for Hearing in this matter on March 22, 2006, and served it on Ms. Wierczorek and Mary Simon, Social Services Director of Roseville.

10. The Administrative Law Judge adopts as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Finding of Facts, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Both Minnesota and federal law¹³ give the Administrative Law Judge and the Commissioner of Health authority to conduct this proceeding, to consider whether Roseville's proposed discharge of Petitioner meets the requirements of a law, and to make findings, conclusions, and orders about that issue.

2. The Department gave the Petitioner and Roseville proper and timely notice of the hearing in this matter and the Department has complied with all of the law's substantive and procedural requirements.

3. Under both federal and state law, a nursing home's intent to discharge a resident must include notice of the state's process for a resident's right to appeal, the reasons for the proposed discharge, and the name, mailing address, and telephone of the state's ombudsman.¹⁴

4. The Notice of Discharge issued to Petitioner's representative, Mr. Jones, complied with applicable law.

5. Under Minnesota law, a resident appealing notification of an intended discharge must request a hearing in writing no later than 30 days after receiving written notice. Petitioner filed a timely appeal of Roseville's Notice of Discharge.

6. Roseville has the burden of proving by a preponderance of the evidence that the Petitioner meets the criteria of discharge.

7. Under 42 U.S.C. §§ 1395i-3(c), a nursing home may transfer or discharge a resident if the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under Medicare or Medical Assistance) for a stay at the facility.

¹³ Minnesota Statutes, section 14.50, and section 144A.135; Title 42, United States Code, sections 1395i-3(e) and 1396r(e) and Title 42, Code of Federal Regulations, section 483.12.

¹⁴ 42 U.S.C. §§ 1395i-3(c)(2)(B) and 1396r(c)(2)(B); Minnesota Statutes, section 144.651, subdivision 29, and section 144.135; see also 42 C.F.R. § 483.12.

8. Roseville has proven by a preponderance of the evidence that the Petitioner failed, after reasonable and appropriate notice, to pay for her stay at Roseville. Roseville has also proven by a preponderance of the evidence that it gave proper notice of its intent to discharge Petitioner.

9. Under 42 C.F.R. § 483.12(a)(7), "A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility."

10. Roseville has not begun the process of reasonable discharge planning on the Petitioner's behalf. Roseville has not provided sufficient preparation and orientation to Petitioner to ensure her safe and orderly discharge from the facility.

11. These Conclusions are reached for the reasons set forth in the attached Memorandum, which is hereby incorporated by reference in these Conclusions.

12. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

Based upon these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge respectfully recommends that the Commissioner **GRANT** the Petitioner's appeal and **DENY** the request of Roseville Good Samaritan Center to discharge Petitioner at this time.

Dated: May 5, 2006

s/Lucinda E. Jesson
LUCINDA E. JESSON
Administrative Law Judge

MEMORANDUM

The issue to be determined in this contested case as set out in the Notice of Hearing is whether Roseville may discharge Petitioner under sections 1819(c)(2) and 1919(c)(2) of the Social Security Act and 42 C.F.R. Section 483.12 due to non-payment. It was undisputed at the hearing that Petitioner was not current in her bill with Roseville. At the end of March, she owed \$49,951.52 to the facility. Nor was it disputed that Roseville had taken steps to apply for Minnesota Assistance(MA) for Petitioner and that her financial representative for these purposes had not provided documentation to MA in order to complete her application.

However, federal law requires that even where a resident is discharged for nonpayment, it must perform appropriate discharge planning. Under 42 C.F.R. 483.12 (a)(7), a facility seeking to discharge a resident must engage in "sufficient preparation and orientation." While the November 15, 2005 Notice of Discharge states that "Roseville Good Samaritan Care Center intends to fulfill its legal obligations in performing appropriate discharge planning" there was no evidence presented at the hearing that Roseville had engaged in any prior planning or orientation as required for discharging a resident. Simply relying upon the statement of the Petitioner's representative, Mr. Jones, that he would "take care of her" does not satisfy the federal requirement.

Roseville has not engaged in the required preparation and so cannot discharge the Petitioner at this time. If Petitioner does not pay the overdue amounts, Roseville can seek discharge again when it has an appropriate discharge plan in place.

L.E.J.